

1 JUDGE SIPPPEL: Which say, "some or all of which
2 could have possibly gone to KSRM." All right. So I have
3 reconsidered my ruling. I am still going to sustain the
4 objection, but I am going to make the correction as I have
5 indicated. So, let me read into the record exactly how the
6 last two lines of Paragraph 9 are going to read now.

7 Going out to the margin: Kodiak translators,
8 Peninsula refused to stop their operations and thereby
9 garnered income, insert some or all of which possibly "could
10 have gone to KSRM or the licensee of the Kodiak stations."
11 The word "which" comes out entirely. Okay. Does everybody
12 have that?

13 MR. SOUTHMAYD: Mm-hmm.

14 MR. SHOOK: Okay, could you --

15 JUDGE SIPPPEL: Want me to do it again?

16 MR. SHOOK: Please.

17 JUDGE SIPPPEL: Okay. Well, I can go to the
18 beginning of the sentence.

19 MR. SHOOK: Well, I'm fine with what's in. It's
20 what's --

21 JUDGE SIPPPEL: Well, let me read the whole
22 sentence into the record here. This is the last sentence of
23 Paragraph 9: Worse, even after the FCC told Peninsula in
24 2001 to shut down the Kenai, Soldotna and Kodiak
25 translators, Peninsula refused to stop their operations and

1 thereby garnered income, insert: some or all of which
2 possibly could have gone to KSRM, Inc. or the licensee of
3 the Kodiak stations.

4 MR. SHOOK: Okay.

5 JUDGE SIPPEL: Next objection, please?

6 MR. SOUTHMAYD: Paragraph 10, the first sentence:
7 KSRM has proudly served the local communities of Kenai and
8 Soldotna through news programs and public affairs to the
9 end.

10 It is self-serving fluff. There is no factual
11 basis for it to be in this record.

12 JUDGE SIPPEL: Well, the witness came down from
13 Alaska to tell us about his operation and we will let him do
14 that. Overruled.

15 MR. SOUTHMAYD: Second sentence: Peninsula, on the
16 other hand, has spent little time or effort serving Kenai
17 and Soldotna.

18 To the contrary, his testimony indicates they
19 operate two broadcast stations in the market. We ask that
20 it be struck. It's irrelevant and factually inaccurate
21 based on his own testimony.

22 JUDGE SIPPEL: Well, I am troubled by that one
23 sentence: Peninsula has spent little time or effort serving
24 Kenai and Soldotna.

25 MR. SHOOK: Your Honor, that was the matter that

we developed at length yesterday, relative to the main
2 studio question that was going on. And it was --

3 JUDGE SIPPEL: I am sorry, **go** ahead. I am sorry?
4 All right. You are saying that the record is clear and will
5 clearly establish that?

6 MR. SHOOK: Well, the record has in it what it has
7 in it.

8 JUDGE SIPPEL: Yes, I understand.

9 MR. SHOOK: As far as whatever logical conclusions
10 one can draw from that --

11 JUDGE SIPPEL: Yes.

12 MR. SHOOK: -- that's, I believe, supported by the
13 statement made here by Mr. Davis.

14 JUDGE SIPPEL: It is not off the top **of** his head?

15 MR. SHOOK: Hardly. This is somebody who has been
16 in the market for 30 years. He knows who is there, who's
17 not there.

18 JUDGE SIPPEL: All right. Well, we will let Mr.
19 Southmayd develop that on cross-examination. I may want to
20 ask a few questions on that but I am going to reserve ruling
21 on that for the time being.

22 You may want to reassert your objection on that
23 one again in the testimony.

24 MR. SOUTHMAYD: Thank you, Your Honor.

25 JUDGE SIPPEL: That is it?

1 MR. SOUTHMAYD: Yes.

2 JUDGE SIPPEL: subject to my rulings, then, Mr.
3 Davis's testimony is received in evidence as the -- we have
4 to give this an exhibit number?

5 MR. SHOOK: Enforcement Bureau Exhibit 31.

6 JUDGE SIPPEL: Okay. So the Reporter will mark
7 this and receive it into evidence as EB Exhibit 31. Are you
8 now tendering him for cross-examination?

9 (The document referred to,
10 previously marked **for**
11 identification as Enforcement
12 Bureau Exhibit 31, was
13 received in evidence.)

14 MR. SHOOK: I am.

15 JUDGE SIPPEL: Okay, Mr. Davis, you are going to
16 be questioned by Mr. Southmayd.

17 CROSS-EXAMINATION

18 BY MR. SOUTHMAYD:

19 Q Good morning again, Mr. Davis. Can we go over the
20 local stations that operate in the Kenai, Soldotna Peninsula
21 market, based on your 30 years of experience?

22 A Was that a question?

23 Q Yes.

24 A I can't stop you.

25 Q Thank you for your help on that. Is KSRM-AM a

1 station that operates in the Kenai, Soldotna market?

2 A Yes, sir.

3 Q And your company, and if it would be all right,
4 since you are the 90 percent owner, I will probably use you
5 and KSRM interchangeably since, as I understand it, you run
6 the company?

7 A Yes, sir.

8 Q Does your station KWHQ-FM operate in the Kenai,
9 Soldotna market?

10 A Yes.

11 Q And KSLD-AM?

12 A Yes.

13 Q And KKIS-FM?

14 A Yes.

15 Q What other stations are in that market that
16 compete for radio revenue?

17 A None that I know of, except Peninsula.

18 Q What stations are those?

19 A Pardon me?

20 Q What stations are those?

21 A KPEN, KBXA, I think, and KWW, through their
22 translators.

23 Q Are there any other stations that compete for
24 local revenues, to your knowledge?

25 A KDLL. That's public radio and they get donations

1 from all our businesses, from most of our businesses. That
2 is advertising revenue.

3 Q Do they get commercial advertising revenue?

4 A Commercial advertising dollars as grants.

5 Q So are you saying KDLL runs commercial
6 advertising?

7 A No. They run grant advertising, which means the
8 name of the person, or the name of the business, where
9 they're located, the products and services they provide and
10 phone numbers. So --

11 JUDGE SIPPEL: Go ahead, finish. This is very
12 interesting. Go ahead.

13 BY MR. SOUTHMAYD:

14 Q Have you listened to KDLL recently, while you've
15 been in the market?

16 A Oh, yes.

17 Q And you hear commercial advertising on the
18 station?

19 A I hear commercial-grant advertising.

20 Q Well, maybe you need to differentiate for the
21 record what is commercial advertising as you run it, and
22 commercial grant advertising as you perceive KDLL runs it?

23 A Public radio stations in our market are allowed to
24 get advertising dollars from advertising budgets in the form
25 of a grant from a business. They take that money and use it

1 to put the name of the business, the services they provide,
2 the phone numbers, and sometimes it's as much as 30 seconds
3 of grant advertising.

4 Q So are you suggesting that, contrary to being a
5 non-commercial station, run commercial announcements?

6 A All public radio stations do that.

7 JUDGE SIPPEL: Is the grant money that comes in,
8 is that a tax deductible thing? Let's say a Texaco gas
9 station wants to give some money to a local public
10 broadcasting station. And they put his name on and say this
11 programming is being brought to you in part by a
12 contribution of the ABC Texaco Company?

13 THE WITNESS: Who offers gas at seven combined
14 streets and they have a number of 262-5455 and the owner
15 makes the donation in his name.

16 JUDGE SIPPEL: They go that far?

17 THE WITNESS: Mm-hmm.

18 MR. SHOOK: Your Honor, just a point of reference
19 for Mr. Davis. If he's going to affirm or deny something,
20 that he should state either yes or no as opposed to mm-hmm,
21 because that might not get picked up.

22 THE WITNESS: Sorry, thank you.

23 JUDGE SIPPEL: Thank you, Mr. Shook. Do you have
24 any knowledge as to whether or not ABC Texaco gets a tax
25 deduction for that?

1 THE WITNESS: Well, they would expense it off
2 either as advertising or an expense donation; advertising or
3 a donation, either way. They would expense off with the
4 company.

5 JUDGE SIPPEL: I understand. You are giving me
6 the two alternatives. But the public broadcasting station
7 can still -- the way you describe it, it sounds like that is
8 advertising.

9 THE WITNESS: It certainly sounds like advertising
10 to me, sir.

11 JUDGE SIPPEL: So then that would be another
12 possible source of these so-called lost revenues? All
13 right. I am not getting into whether or not this is the
14 legality or the tax ramification or anything like that. I
15 am just trying to understand what you are testifying to, to
16 be very clear.

17 I am sorry, Mr. Southmayd.

18 THE WITNESS: The FCC does not call that
19 advertising. I do.

20 JUDGE SIPPEL: Well, I am not here to make any
21 comment about that. I am just trying to point out factually
22 what your testimony is.

23 BY MR. SOUTHMAYD:

24 Q Well, Mr. Davis, do you get commercial spots sent
25 to you by advertising agencies that you run on the air?

1 A Yes.

2 Q And do you hear those same commercial spots on
3 KDLL?

4 A No.

5 Q They do something entirely different than what you
6 do, this underwriting announcement stuff. Is that so?

7 A Yes, they do.

8 Q Okay. So, as a practical matter, Mr. Davis, let
9 me ask a preliminary question: How did you come to become
10 involved in this proceeding?

11 A In which proceeding?

12 Q The one you're sitting in right here this morning,
13 involving Peninsula, this hearing?

14 A I became involved in it when I shut my translator
15 off on June 1, 1994.

16 Q No, sir, I'm not asking you that. I'm asking you:
17 How did you come to become involved in this hearing?

18 JUDGE SIPPEL: How did you happen to get from
19 Alaska to here today? How did that happen to come about?

20 THE WITNESS: Through the Enforcement Agency of
21 the FCC.

22 BY MR. SOUTHMAYD:

23 Q Mr. Davis, did you contact the FCC and volunteer
24 to participate in this matter involving Peninsula?

25 A Did I initiate the contact?

1 Q Yes?

2 A No.

3 Q Who contacted you?

4 A The Enforcement Division.

5 Q Did you initiate a contact through your legal
6 counsel?

7 A I don't have any legal counsel here.

8 Q Mr. Davis, that's not my question. I didn't ask
9 you legal counsel here. Was the call from the Bureau to you
10 in response to a call made to the Bureau by your legal
11 counsel?

12 A Negative. I don't know that.

13 Q Is your legal counsel David Tillotson?

14 A No. He is not. I don't know who that man is.

15 Q Is your legal counsel Peter Gutman?

16 A Yes. He is.

17 Q Did he contact the Bureau and, to the best of your
18 knowledge, and volunteer your services in this hearing?

19 A Not to my knowledge, but he may have. I don't
20 know.

21 Q I see.

22 A I did not direct him to

23 Q Did you volunteer; did you give a deposition in
24 this proceeding?

25 A Yes, I did.

1 Q And did you voluntarily contact the Bureau and
2 volunteer to give that deposition?

3 A No. I was contacted by the Bureau and asked if I
4 could give the deposition

5 Q Did the Bureau tell you how you came to their
6 attention?

7 A No. I don't know. I don't recall. The initial
8 contact, you mean?

9 Q So is it fair to say your involvement here is a
10 complete mystery to you? You don't know how you became
11 involved in this proceeding?

12 A Certainly not.

13 Q Then how did you become involved in this
14 proceeding?

15 A I was contacted by the FCC and asked if I would
16 participate.

17 MR. SHOOK: Your Honor, if I could point something
18 out, in terms of the argument that's been going on back and
19 forth here. Mr. Davis did, in fact, begin to answer the
20 question before he was cut off by Mr. Southmayd by pointing
21 out that --

22 MR. SOUTHMAYD: Your Honor, I object to counsel
23 testifying for his witness.

24 MR. SHOOK: I'm simply --

25 JUDGE SIPPEL: Wait just a second. We are going

1 to excuse the witness. This is not going to go any further
2 than this. I am sorry, Mr. Davis, I just want to get this
3 straightened out. Would you please step outside? I a
4 sorry, off the record.

5 (Whereupon, a short recess was taken.)

6 JUDGE SIPPEL: Back on the record. Mr. Davis, I
7 am sorry that we had to excuse you again, but I had to
8 establish some ground rules for counsel. There is obviously
9 a bit of friction here between the parties and I do not want
10 to have you put in the middle of it.

11 My first obligation is to get this record
12 established, but I am going to try to protect you as a
13 witness, also, so please bear with me. Mr. Southmayd, you
14 may continue.

15 MR. SOUTHMAYD: Thank you.

16 CROSS-EXAMINATION (CONT)

17 BY MR. SOUTHMAYD:

18 Q Mr. Davis, is it fair to say that in the Kenai,
19 Soldotna market, there are seven stations that sell
20 traditional commercial radio advertising, those being two
21 AMs and two FMs that you own and three FM stations that
22 Peninsula owns?

23 A Yes.

24 Q Is it fair to say, therefore, that it's in your
25 business interest for Peninsula's three stations to go off

1 the air?

2 A Say that again?

3 Q Is it fair to say that it's in your business
4 interest, therefore, for Peninsula's three stations, the
5 only three stations that compete with your stations for
6 traditional commercial advertising, to go off the air?

7 A Yes.

8 Q Isn't that why you're here today?

9 A No.

10 MR. SOUTHMAYD: Your Honor, I'd like to tender
11 what I'd like to have marked and labelled as PCI Exhibit 2

12 JUDGE SIPPEL: For identification, we will do
13 that. Is this a deposition?

14 MR. SOUTHMAYD: No, sir. It's a copy of an FCC
15 document.

16 JUDGE SIPPEL: We just have to identify it for the
17 record.

18 MR. SOUTHMAYD: It's a letter dated July 29, 1998
19 to Mrs. Sally Hoskins, Mr. Chester Colvin, and, I believe,
20 to the witness, Mr. John Davis.

21 THE WITNESS: July 29? Well --

22 JUDGE SIPPEL: The Reporter **will** please mark that
23 document as Peninsula's Exhibit 2 for identification.

24 (The document referred to was
25 marked for identification as

1 Peninsula Communications, Inc.
2 Exhibit 2.)

3 MR. SOUTHMAYD: Your Honor, I'd like to make one
4 available to the witness.

5 JUDGE SIPPEL: Please do. Put it in front of him,
6 yes.

7 BY MR. SOUTHMAYD:

8 Q Mr. Davis, could you review the document placed in
9 front of you as PCI Exhibit 2?

10 JUDGE SIPPEL: Let us go off the record while he
11 looks at this.

12 (Whereupon, a short recess was taken.)

13 JUDGE SIPPEL: Are we on? Mr. Shook?

14 MR. SHOOK: Your Honor, before we proceed with
15 this document, I have a preliminary objection, which I
16 believe should be addressed and discussed outside of the
17 presence of the witness.

18 JUDGE SIPPEL: Well, I have let the witness review
19 the document. When he is finished -- you cannot give a
20 general -- no? All right. We will excuse the witness. You
21 can take the document with you.

22 THE WITNESS: It will take a long time to review
23 it. I have not seen it in years.

24 JUDGE SIPPEL: Do you want to go sit in the
25 witness room?

1 THE WITNESS: Yes. I have to read it.

2 JUDGE SIPPEL: All right. Is that going to be
3 necessary, Mr. Southmayd, for him to --

4 MR. SOUTHMAYD: Are you real familiar with this?

5 MR. SHOOK: Well, after we're finished, it may
6 become apparent what needs to be done.

7 JUDGE SIPPEL: Do you mind? The witness room **is**
8 right back here and you would have a comfortable table there
9 to read it at. Thank you, Mr. Davis.

10 JUDGE SIPPEL: Yes, sir?

11 MR. SHOOK: Your Honor, the document, of course,
12 speaks for itself. In terms of what ultimately happened
13 here in this proceeding, I don't know what Mr. Southmayd
14 knows, or what he intended to develop into the record here,
15 but this is a forfeiture order which ultimately was
16 prosecuted by the United States Attorney in Alaska.

17 It is my understanding that that action ended with
18 either a settlement or that the action was simply dismissed.
19 As a consequence, there is no legal effect to this
20 particular document, this being the forfeiture order.

21 MR. SOUTHMAYD: There was no legal effect,
22 perhaps, on the forfeiture.

23 MR. SHOOK: There's no legal effect, period.

24 MR. SOUTHMAYD: There are legal conclusions here
25 and this whole matter was the result of an action brought by

1 Peninsula and goes straight to his credibility as a witness
2 in this proceeding.

3 JUDGE SIPPEL: Well, it apparently shows some
4 past, some past conduct between Mr. Davis and Peninsula?

5 MR. SHOOK: Absolutely. That I understand.

6 JUDGE SIPPEL: So it may impact on his
7 motivations.

8 MR. SHOOK: I understand that that's a
9 possibility.

10 JUDGE SIPPEL: There is no sense in spending a lot
11 of time on it. If Mr. Davis has a general familiarity with
12 the situation. He does not have to absorb everything in
13 this document.

14 MR. SOUTHMAYD: I wouldn't think so.

15 MS. LANCASTER: Shall I tell him to skim it, Your
16 Honor, but not read it in great detail?

17 JUDGE SIPPEL: Why don't you go back there and
18 talk **to** him about that, Ms. Lancaster, okay?

19 MS. LANCASTER: Yes, sir.

20 JUDGE SIPPEL: You can explain what was said here
21 to him. We are not going to spend a lot of time on this,
22 but we are going to talk about it.

23 Can we go off the record now while we finish with
24 this point?

25 (Discussion held off the record.)

1 JUDGE SIPPEL: Mr. Davis, I am going to permit
2 some examination on this document, but the document is more
3 for purposes on focusing you on that particular situation.
4 You are not going to have to report on what is in the
5 document.

6 THE WITNESS: Okay.

7 JUDGE SIPPEL: Go ahead, Mr. Southmayd.

8 BY MR. SOUTHMAYD:

9 Q Thank you. Mr. Davis, have you generally reviewed
10 this document?

11 A Yes.

12 Q Can you tell me if you'd seen it before today?

13 A I have.

14 Q It's dated July 29, 1998. Is that correct?

15 A That's what it's dated, yes.

16 Q So do you believe that you reviewed it sometime
17 between that date and today?

18 A Yes.

19 Q One of the addressees on the letter is Mr. John
20 Davis, President, KSRM, Inc., 8C2 Box 852, and so forth,
21 Soldotna, Alaska. To the best of your knowledge, was this
22 addressed to you?

23 A Yes, it is.

24 Q Are you the John Davis that's described in this
25 letter?

1 A Yes.

2 Q Can you tell me what your understanding as to what
3 action the FCC took, if any, with regard **to** you pursuant to
4 this letter?

5 A The FCC -- I think it was a premature transfer of
6 control, and I was fined \$10,000.00 along with King
7 Broadcasters. I paid my fine because the FCC told me to.

8 Q Were the stations that were involved in the
9 premature transfer of control involving KSLD-AM and KKIS-FM?

10 A Yes.

11 Q Two stations that you currently own?

12 A Yes.

13 Q Mr. Davis, is it true that the petitioner, in
14 connection with this matter, was Peninsula Communications?

15 A Petitioner? I see Peninsula also alleged, *so* I
16 would assume so, yes.

17 Q Well, if you could turn to Page 2,

18 A Like I say, I have not reviewed this thing.

19 Q So, are you saying that you have doubts whether
20 Peninsula was the original petitioner in this matter?

21 A No. What I am saying is that Peninsula alleged
22 but this *is* to deny.

23 Q Right. In fact, on Page 2 at the **top**, it cites
24 that there was a petition to deny filed by Peninsula
25 Communications, Inc.?

1 A Right.

2 Q In your understanding, Peninsula Communications,
3 Inc. is the Peninsula currently involved in this hearing?

4 A Yes. That's my understanding.

5 Q Mr. David Becker's company?

6 A Yes.

7 Q Is it fair to say that you were found to be guilty
8 of an unauthorized transfer of control and fined \$10,000.00,
9 which you paid because of a petition Mr. Becker's company
10 filed against this matter?

11 A Yes.

12 Q Mr. Davis, since the time that this letter was
13 issued, can you tell us what petitions you have filed
14 against Peninsula Communications' applications before this
15 Commission?

16 A None come to mind.

17 Q Well, let me suggest some.

18 A Okay.

19 Q Are you familiar that in 1995, Peninsula
20 Communications filed license renewal applications for its FM
21 translators?

22 A I don't know the dates. I assume they did.

23 Q Did KSRM file petitions to deny against the
24 Commission approval of those FM translators?

25 A I have no recollection of that. I don't know.

1 Q Do you think you would recall if your company had
2 filed petitions to deny against Mr. Becker's translators?

3 A Not that far back, I wouldn't, no. I'd have to
4 check the records.

5 Q Mr. Davis, do you know if in 1996 Peninsula
6 Communications attempted to sell its FM translators in
7 Alaska to an entity known as Coastal Broadcast
8 Communications, Inc.?

9 A Yes.

10 Q Did your company file a petition to deny against
11 those applications for the transfer of those stations to
12 Coastal Broadcast Communications, Inc.?

13 A I don't recall, but we would be crazy if we
14 didn't.

15 Q Mr. Davis, in 1997, do you know, did Peninsula
16 Communications, Inc. file license renewal applications for
17 its FM translators in Alaska?

18 A I would assume so.

19 Q Did your company, KSRM, Inc., file petitions to
20 deny against every one of Peninsula's license renewal
21 applications for those translators in 1997?

22 MR. SHOOK: Objection.

23 THE WITNESS: I don't recall, but we should have.

24 MR. SHOOK: Objection. The way the question was
25 phrased, the documents we have, what we're doing is testing

1 the witness's memory. All he has to do is show him the
2 document. The document would show what happened and as to
3 which stations.

4 MR. SOUTHMAYD: I am testing the witness's
5 credibility as well.

6 JUDGE SIPPEL: He can ask the question and the
7 witness says he does not. Well, the question has been asked
8 and answered. I am overruling the objection.

9 MR. SHOOK: Did Your Honor present --

10 JUDGE SIPPEL: What? I am not going to tell you.
11 Go ahead.

12 BY MR. SOUTHMAYD:

13 Q Mr. Davis, to your knowledge, did the Federal
14 Communications Commission at one time approve the sale of
15 the Alaska translators from Peninsula Communications to
16 Coastal Broadcast Communications, Inc.?

17 A I really don't know.

18 Q Mr. Davis --

19 A I just don't remember.

20 Q Do you recall if KSRM, Inc., your company in which
21 you own 94 percent, filed a petition for reconsideration of
22 a Commission grant of the sale of the Alaska FM translators
23 that Peninsula owns to Coastal Broadcast Communications,
24 Inc.?

25 A I don't recall, but I would hope we did.

1 Q Mr. Davis, are you aware of an appeal filed before
2 the United States Court of Appeals in the year 2000 by
3 Peninsula Communications to an order of the Federal
4 Communications Commission denying its license-renewal
5 applications for its FM translators?

6 A I'm not aware of that --

7 MR. SHOOK: Objection. That's not in the record.
8 That misstates what's in the record.

9 MR. SOUTHMAYD: I asked if he knew, Your Honor.

10 JUDGE SIPPEL: Wait just a second. You are saying
11 that he is misstating. You mean he is misstating, that he
12 is rnischaracterizing the lawsuit?

13 MR. SHOOK: Absolutely. Absolutely. If you look
14 at the 2000 FCC order, it didn't deny applications.

15 JUDGE SIPPEL: All right. But --

16 MR. SOUTHMAYD: I'll restate **it**, Your Honor.

17 JUDGE SIPPEL: Thank you.

18 BY MR. SOUTHMAYD:

19 Q Mr. Davis, are you aware of an appeal filed by
20 Peninsula Communications in 2000 in the United States Court
21 of Appeals for the District of Columbia Circuit to an order
22 of the Federal Communications Commission involving its FM
23 translators in Alaska?

24 A I am.

25 Q Mr. Davis, did your company, KSRM, Inc., file to

1 be an intervenor in that United States Court of Appeals
2 proceeding?

3 A Yes.

4 Q For what purpose?

5 A At the recommendation of my attorney.

6 Q For what purpose?

7 A To make sure we had a part in this case.

8 Q Why did you want to have a part in this case?

9 A My attorney recommended it.

10 Q Why did he recommend it?

11 A I have no idea.

12 Q What is your intent in participating in this case?

13 A I was hoping that we'd get a level playing field
14 and that we could all play under the same rules.

15 Q Mr. Davis, you were attempting to insure that
16 Peninsula's license renewal applications were not approved
17 and you were actively opposing Peninsula in that United
18 States Court of Appeal's case. Is that a correct
19 characterization of your role?

20 A You'll have to clarify which licenses.

21 Q FM-translator licenses.

22 A Translator licenses, yes.

23 Q That was your role?

24 A Mm-hmm.

25 Q You were an active opponent?

1 A Yes.

2 Q And it's your testimony here today, you don't
3 remember whether you filed a petition to deny against the
4 1995, 1997 Peninsula translator-license renewals and you
5 don't recall filing a petition to deny against their
6 assignment applications to Coastal Broadcast Communications,
7 Inc. before the Federal Communications Commission?

8 MR. SHOOK: Objection.

9 THE WITNESS: I don't recall, but I would hope we
10 did.

11 JUDGE SIPPEL: Wait, wait, wait.

12 MR. SHOOK: Asked and answered, first of all. And
13 secondly, he's got a compound question. There are so many
14 things combined in the question.

15 JUDGE SIPPEL: Well, now wait a minute. This is
16 cross-examination. Obviously, Mr. Davis, as with Mr.
17 Becker, these are businessmen who were very much attuned in
18 terms of what these procedural things are, because it is all
19 tied in with their business.

20 The witness seems to be able to understand the
21 questions. He just does not recall. That is his answer.
22 Now, if you want to redirect him on this, you can. But this
23 is what cross-examination involves.

24 I am sorry, Mr. Davis, to interrupt you. Go
25 ahead, Mr. Southmayd.

BY MR. SOUTHMAYD:

2 Q Mr. Davis, do you have some sort of short-term
3 memory problem?

4 JUDGE SIPPEL: I am going to --

5 THE WITNESS: Yes, I do.

6 BY MR. SOUTHMAYD:

7 Q You do?

8 A Mm-hmm.

9 MR. SOUTHMAYD: Well, Your Honor, I'm going to ask
10 that his testimony be thrown out. If he has a short-term
11 memory problem, he's a completely unresponsive witness. I
12 objected to material in his testimony in 1979 that was left
13 in the record and he has short-term memory and is completely
14 unresponsive to my cross-examination, going back to 1998.

15 JUDGE SIPPEL: Having a short-term memory, does
16 not disqualify a witness. There would be a lot of testimony
17 thrown out.

18 MR. SOUTHMAYD: Mr. Davis --

19 JUDGE SIPPEL: He is being honest with you when
20 you asked him that question.

21 BY MR. SOUTHMAYD:

22 Q Mr. Davis, are you aware of an appeal pending
23 before the United States Court of Appeals for the District
24 of Columbia Circuit involving Peninsula Communications **and**
25 its FM translators in Alaska?

1 A Yes.

2 Q Is your company KSRM, Inc. an intervenor in that
3 proceeding?

4 A I would imagine. I don't know. I don't know.

5 Q Mr. Davis, is it your understanding that that's a
6 proceeding ongoing at the present time?

7 A Yes.

8 Q But you're saying you don't know whether you're
9 involved in that proceeding or not?

10 A I really don't. I wish my attorney was here. He
11 could tell you. I would hope we are, you know. I
12 definitely want to get a level playing field. I definitely
13 want to get the translators out of my market and out of
14 everybody else's market, or else let me have my translators,
15 as well.

16 Q Mr. Becker, I mean, Mr. Davis, why do you want to
17 get the translators out of your market?

18 A Because we don't have a level playing field.

19 Q Aren't Mr. Becker's stations the only competitor
20 you have in the Kenai, Soldotna market for local
21 advertising?

22 A No.

23 JUDGE SIPPEL: Would you ask the question as to
24 what would be the desired level playing field? Could he
25 describe it? I do not quite understand that.

1 BY MR. SOUTHMAYD:

2 Q For the record, Mr. Davis, could you tell us what
3 you mean by your desire to have a level playing field?

4 A If I were allowed to have all the translators that
5 Mr. Becker has, I would have them just exactly like he has
6 them but I'm not allowed. I shut off my translator when the
7 FCC told me to. I had income from that translator and I
8 would have put them **all** around if they'd allowed me to, but
9 they didn't allow me to.

10 But Mr. Becker keeps on for eight and a half years
11 having all these translators and I'm not allowed to have
12 mine.

13 Q All right. So if you had yours, you wouldn't --

14 A Wouldn't have any problem at all.

15 Q So, Mr. Davis, are you jealous that Mr. Becker has
16 translators and you don't? Is that what you're saying?

17 JUDGE SIPPEL: No, no, no. Do not answer that
18 question. Do not answer that question. I think that you
19 developed the point far enough. You are getting into a
20 situation where you are arguing, being argumentative with
21 this witness and I won't let this go any further. I think
22 you have established what you want to establish.

23 MR. SOUTHMAYD: Thank you.

24 BY MR. SOUTHMAYD:

25 Q Mr. Davis, you indicated that the FCC told you to

1 turn off your translator in Homer. Is that correct?

2 A They told everyone in the U.S.A. to.

3 Q Did they tell you to?

4 A Yes. They told me to.

5 Q When did they do that?

6 A They did it by rule making and they gave me three
7 years warning, as they did Mr. Becker. On the morning of
8 the 31st of May, 1994, I went down, pulled the plug on my
9 translator, removed the equipment. I turned on the radio
10 the next day and Mr. Becker's translators were on all over
11 the place. **And** I thought: Wow, this doesn't seem fair.

12 Q So did that make you angry?

13 A It didn't make me angry at all. It just didn't
14 seem fair. My first thing was the FCC not being fair.
15 Somehow they've allowed him to continue doing this and I'll
16 have to find out why, so that maybe I can do the same thing.

17 Q Mr. Davis, the action in which the FCC told you to
18 terminate the operation of your translators, can you
19 identify that with any specificity?

20 A No, I can't. It was just rule making that came
21 from the FCC and I advised my attorney that, I said, you
22 mean, I've really got to turn off my translator? Yeah,
23 everybody does. So I did.

24 Q So you were advised by your attorney to turn off
25 your translator?

1 A No. I was advised by the FCC in the notice. And
2 I asked my attorney: Is this really right? Do I have to do
3 this? Can we appeal this? No. You had three years
4 warning. They did it five years ago, but they gave you
5 three years extension, and you better turn it off. So I
6 turned it off.

7 Q Just so I understand. You didn't receive a letter
8 from the FCC?

9 A I don't recall in 1994 what I got, sir. I got a
10 notice and I knew I better turn them off.

11 Q I see. Mr. Davis, if you learned that it was not
12 necessary for you to turn off the FM translators, would you
13 consider it to be a level playing field then?

14 A Absolutely.

15 Q Were you familiar with the fact that in the FCC's
16 order, the 1991 order, which I think is the way you
17 described it, there was a footnote that suggested that
18 translators in Alaska might not have to apply, might not
19 have to conform with the requirements that had otherwise
20 been promulgated in that order?

21 JUDGE SIPPEL: You do not have to answer that
22 question. Now look, I have been very generous with you on
23 this cross-examination. First of all, I do not see any
24 reason for going down that path with this particular
25 witness. You are going to show him a footnote in a 1991